Supreme Court,
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NO. 85-622

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

FRANK PIETRONIRO, Vice-President, MARY PIETRONIRO, President and PIET CORPORATION,
Petitioners,

vs.

BOROUGH OF OCEANPORT, CLEMENT SOMMERS, ELWOOD BAXTER, LOUIS SYLVAIN, GEORGE BARRETT and NICHOLAS LEONE,
Respondents.

BRIEF AND APPENDIX OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

CONNELL, FOLEY & GEISER
JOHN F. NEARY
Gateway I, Suite 1600
Newark, New Jersey 07102
(201) 643-2060

Counsel for Respondents

Adams Press Corp., 1188 Raymond Boulevard, Newark, New Jersey 07102—(201) 623-8611

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Statement of Questions Presented for Review

Contrary to the "Questions Presented" of the petitioners, there is no equal protection issue, conflict in the circuits, conflict with the opinions of this Court or important questions of federal law raised by the petitioners' petition.

The only question presented by the petitioners' petition is as follows:

> Is it appropriate for this Court to review a decision of the United States Court of Appeals for the Third Circuit which ruled against the petitioners on the sole basis that the trial record did not support the petitioners' own theory of the case?

TABLE OF CONTENTS

	PAGE
Statement of Questions Presented for Review	i
Table of Contents	ii
Table of Authorities	iv
Opinions Below	1
Constitutional Provisions, Statutes and Regulations Invoked	2
Statement of the Case	2
Summary of Argument	4
ARGUMENT:	
POINT I—The only true issue presented by the pending petition is whether the opinion of the Third Circuit Court of Appeals is supported by the trial record	8
POINT II—The Third Circuit Opinion does not conflict with the decision of any other Court of Appeals on the same subject matter	9
POINT III—The Third Circuit opinion does not conflict with any decision of this Court	15
POINT IV—The petitioners' belated argument of inadequate relocation advisory assistance in connection with the Kinkade property was properly rejected by the court below and, if it was not, that matter is not the proper subject for review by this Court	16
Conclusion	21

PAGE

APPENDIX:

Excerpts From Transcript of Oral Argument on March 19, 1985 of Appeal Before the Third Circuit Court of Appeals 1a

Excerpts from Petitioners' Answering Brief Filed With the Third Circuit Court of Appeals 5a

Excerpts From Trial Transcript 7a

Closing Aruments of Petitioners' Counsel 12a

Letter Dated August 7, 1974 From Nicholas Leone to Frank Pietroniro 26a

Letter Dated March 25, 1975 From Nicholas Leone to Frank Pietroniro 28a

Deed Dated November 29, 1974 From Kinkade Holding Co., Inc. to Monmouth Park Jockey Club 31a

PAGE

Table of Authorities

Cases Cited

Am. Dry Cleaners & Laundry v. *U.S. Dept. of Transp.*, 722 F.2d 70 (4th Cir. 1983) 12, 14

Battison v. *Niles*, 445 F.Supp. 1082 (N.D. Ohio 1977) 11

Home Furniture Co. of Charlotte v. *U.S.D. of HUD*, 324 F.Supp. 1401 (W.D.N.C. 1971) 11, 13

In re Woods, 143 U.S. 202 (1892) 9

Layne, etc., Corp. v. *Western Well Works*, 261 U.S. 387 (1922) 14

M.M. Crockin Co. v. *Portsmouth Redvelopment Authority*, 437 F.2d 784 (4th Cir. 1971) 10

Southern Power v. *North Carolina Public Service Co.*, 263 U.S. 508 (1923) 9

United States Constitution Cited

Fourteenth Amendment 2

Statutes Cited

42 U.S.C. §1455(c)(1) 2

42 U.S.C. §1983 2

42 U.S.C. §4601 2

42 U.S.C. §4623 2

PAGE

Rule Cited

U.S. Sup. Ct. Rule 17 8

Other Authorities Cited

24 C.F.R. 42.105 2

HUD Regulations 1320.1 & 1371.1 2

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Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Respondents respectfully pray that the petition of the Piet Corporation ("Piet Corp.") and Frank Pietroniro ("Pietroniro") for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit be denied.

Opinion Below

The opinion of the Third Circuit dated June 18, 1985 reversing the jury verdict against respondents and its Order of July 18, 1985 denying petitioners' petition for a rehearing are included in the appendix to petitioners' petition.

Constitutional Provisions, Statutes and Regulations Invoked

The petitioners have cited: the Fourteenth Amendment; 42 U.S.C. §1983; The Housing Act of 1949, 42 U.S.C. §1455 (c)(1); The Uniform Relocation Assistance Act of 1972, 42 U.S.C. §§4601 & 4623; 24 C.F.R. 42.105; and HUD regulations 1320.1 and 1371.1. These references by petitioners have been quoted in the petition. In respondents' view, the issue raised is simply whether the review of this matter is appropriate in light of the fact that this dispute is merely one as to whether the trial record supported the petitioners' own legal theories.

Statement of the Case

The petitioners filed an action under 42 U.S.C. §1983 alleging that they had not received proper relocation advisory assistance in connection with the displacement, under Oceanport's urban renewal program, of a tavern owned by the Piet Corp. The petitioners argued that the Piet Corp. should have been allowed to relocate on a vacant piece of property known as the "Ratti tract" located across from the Piet Corp.'s tavern and *zoned residential.* To buttress their claim, the petitioners asserted that the Ratti tract was the only feasible relocation site. After a jury trial, a verdict was returned awarding the Piet Corp. $184,950.00 and awarding Frank Pietroniro ("Pietroniro") $13,000.00 for an ulcer allegedly sustained due to an inability to relocate the Piet Corp. tavern; Pietroniro is a stockholder, officer and employee of the Piet Corp. The respondents appealed to the Third Circuit Court of Appeals

and the judgment was reversed because, "as a matter of law, the evidence was insufficient to support the conclusion that Piet was denied relocation assistance as required by law. . . ." (Pa2) The decision of the Third Circuit represents nothing more than a finding that the petitioners failed to prove their case.

The Circuit Court noted that petitioners argued two theories of liability: (1) The Piet Corp. was not referred to the only affordable relocation site, the Ratti tract and (2) the respondents acted in bad faith in the administration of the Oceanport urban renewal program. As to the first theory, the Circuit Court noted that the petitioners' argument failed to recognize that the Ratti tract was zoned for residential use and properly concluded that, because the Piet Corp.'s proposed use for the Ratti tract was incompatible with the permitted use, the respondents could not be faulted for any failure to refer petitioners to such a site. (Pa18) Secondly, the Circuit Court properly observed that the Piet Corp. was well aware of the Ratti tract and the zoning problem and therefore concluded that the claim that the respondents did not bring the site to their attention is of no legal consequence. (Pa18) Thirdly, the Circuit Court correctly held that, if the petitioners wanted to secure a zoning variance for the Ratti tract, the proper procedure would have been to apply to the Oceanport Board of Adjustment, which the petitioners never did. (Pa18-19)

As to the second theory of petitioners' case, bad faith administration of the urban renewal program, the Circuit Court found that, assuming such bad faith, there was no causal nexus with the petitioners' alleged damage. (Pa22) That finding is the ineluctable consequence of the very

theory of the petitioners' case that there was no feasible relocation site other than the residentially zoned Ratti tract.

After receiving the adverse opinion of the Third Circuit, the petitioners filed a petition for rehearing (Pa25) wherein they altered their theory of the case, arguing that the Piet Corp. should have been referred to a piece of property known as the "Kinkade parcel". That petition was denied without opinion by order dated July 18, 1985. (Pa48)

Summary of Argument

It is clear that the Third Circuit opinion is founded on a finding that the proofs simply did not support the petitioners' own theory of the case and not that it disputed that theory. Undoubtedly, the petitioners dispute the Third Circuit's holding, but a writ of certiorari is completely inappropriate in the instant case. The petitioners have merely taken the criteria applicable to the requested review and, through remarkable contortion and misdirection, have sought to create the illusion that those criteria have been satisfied. The petitioners' ineffectual efforts at masking the true nature of the dispute are unavailing and serve, instead, to underscore the fact that review of this dispute is unquestionably unfounded.

The first part of a purported two-pronged equal protection argument presented by the petitioners (at pg. i of petition) is whether the doctor and dentist, who were allowed (by the Oceanport Board of Adjustment) to relocate on a portion of the Ratti tract, were afforded improperly preferential relocation advisory assistance. This is obviously a

spurious issue. There was no evidence of any such discriminatory treatment. Both the petitioners and the doctor and dentist were aware of the Ratti tract, but it was only the doctor and dentist who elected to bid on the property and apply for a variance. If the Piet Corp. had applied unsuccessfully for a variance, at least it would have some colorable basis for an argument, but that argument would be with the Oceanport Board of Adjustment, not the respondents. Further, any such claim of discrimination would have little merit given the discretion afforded the Board of Adjustment in such matters. There are, of course, perfectly valid reasons why a doctor's or dentist's office might be permited in a residential district and a tavern would not. However, that is a hypothetical matter and certainly not one that should be the subject of a writ of certiorari.

The second part of the petitioners' alleged equal protection issue (at pg. i of petition) is whether petitioners were denied equal protection in light of the "fact" that they had presented "sufficient evidence at trial" to demonstrate "a causal nexus" between inadequate relocation assistance and petitioners' alleged damage. This imaginative argument reflects the lengths to which petitioners have gone in order to induce this Court to undertake to review the decision below. This is nothing more than a thinly veiled expression of disagreement with the Third Circuit's finding that the petitioners' claim was not supported by the trial record. If this Court were to grant certiorari based on such adequacy-of-the-record arguments, the floodgates would surely be open. Fortunately and properly, such fact-based claims are not included among the criteria for granting petitions for certiorari.

The petitioners' second issue for review is based on the implausible allegation that there is a purported "conflict within the circuits" as a result of the Third Circuit's ruling. (at pg. i of petition) Due to the fact that the Third Circuit's opinion was based on its finding that the trial record did not support the petitioners' own legal theories, it is inconceivable that another circuit court could have evaluated the petitioners' trial record. Perforce, no such conflicting opinion has been, or could be, cited by the petitioners.

The petitioners' purported third and final issue is that this dispute involves "important questions of federal law" which the Third Circuit has allegedly decided contrary to opinions of this Court. As indicated heretofore, petitioners' true quarrel with the Third Circuit is on the adequacy of the evidence and not any divergent view of the law and, as a consequence, it is incontrovertible that there could be no opinion by *any* court which could reflect a view contrary to that of the Third Circuit.

Mention must be made of the petitioners' untimely argument concerning an alleged failure to refer the Piet Corp. to the "Kinkade parcel." After the Third Circuit had ruled against petitioners, they sought to switch the theory of their case and argue the contradictory proposition that the Piet Corp. should have been referred to the Kinkade parcel. The petitioners filed a motion for reconsideration based on that belated change in strategy and that application was appropriately denied. In any event, this issue, at best, is merely an adequacy-of-the-record dispute which is not the proper subject of review by this Court.

In sum, the petitioners, through an outright misrepresentation as to the nature of the Third Circuit's holding, has sought to deceive this Court into believing that said holding represents something more than a reversal of a jury verdict on the ground that it was not supported by the evidence. However, this attempted deception failed abysmally because, of course, the petitioners could cite to no conflicting opinion of another Court of Appeals or of this Court. Nor could they clearly articulate any "important questions of federal law" that are presented by the Third Circuit's opinion. The instant petition is patently frivolous, a gross imposition on this Court, and should be promptly and summarily denied.

ARGUMENT

POINT I

The only true issue presented by the pending petition is whether the opinion of the Third Circuit Court of Appeals is supported by the trial record.

Rule 17 of this Court indicates the character of disputes that would be considered on a petition for certiorari. The instant petition fails to meet any of those critera.

The holding of the Third Circuit Court of Appeals in this matter was merely that the verdict against the respondents was not supported by the evidence. That holding is not, and could not be, in conflict with a decision of another Circuit Court, this Court or any state court of last resort; nor does the opinion represent a departure from the accepted and usual course of judicial proceedings or involve an important question of federal law which should be settled by this Court or has been settled by this Court in a manner which conflicts with the Third Circuit's opinion.

The petitioners truly argue nothing more than that the Third Circuit's view of the evidence was erroneous. That argument plainly does not constitute the requisite "special and important reasons" which would warrant review by this Court. This Court's discretion to review decisions of the circuit courts by a writ of certiorari should only be exercised in matters of gravity and general importance "to avert diversity of judgments and guard

against inadvertence of conclusion in controversies involving weighty and serious matters." *In re Woods,* 143 U.S. 202, 212 (1892). In *Southern Power* v. *North Carolina Public Service Co.*, 263 U.S. 508, 509 (1923) the petitioner had "stated that the cause involved a grave question of vital importance to the public, and alleged as special reason for its re-examination that the decree would deprive Petitioner of property without due process of law and of freedom to contract, contrary to the federal Constitution. . . ." *Id.* at 509. It developed that the genuinely controverted question was whether evidence supported a finding that petitioner's property had been dedicated to public use and, for that reason, the writ was dismissed.

The petitioners have artfully sought to make it appear that the instant matter is something other than an evidence dispute and meets the critera for review by writ of certiorari. However, the issues they have articulated are illusory. As held by this Court in the *Southern Power* case, *supra,* review of a sufficiency-of-the-evidence ruling by a circuit court is inappropriate and for that reason the pending petition must be denied.

POINT II

The Third Circuit opinion does not conflict with the decision of any other Court of Appeals on the same subject matter.

Petitioners are disingenuous in their claim that there is a conflict in the circuits. It is beyond dispute that petitioners have failed to demonstrate any such conflict. Peti-

tioners cite only one circuit court opinion in support of this argument: *M.M. Crockin Co.* v. *Portsmouth Redevelopment Authority,* 437 F.2d 784 (4th Cir. 1971). The *Crockin* case involved an action to prevent HUD and a local redevelopment authority ("Authority") from conveying a certain parcel of land to anyone other than plaintiff. The plaintiff had a commercial operation consisting of a combined furniture and carpet retail business. The Authority took the portion of the premises devoted to plaintiff's carpeting business and left the portion wherein plaintiff conducted its furniture business. The condemnation proceedings were settled on the basis of a promise by the Authority that plaintiff would be allowed to acquire a piece of property known as "parcel 9-A", which was adjacent to the plaintiff's furniture store and zoned to suit plaintiff's contemplated use. In return for that promise, the plaintiff relinqunished its claim to some of the severance damages to which it was otherwise entitled. In disregard of its commitment to plaintiff, the Authority sold parcel 9-A to another. The court held that the plaintiff should have the opportunity to prove that the Authority had failed to comply with controlling regulations and the plan devised to discharge its relocation obligation.

The Third Circuit opinion in this matter did not express disagreement with the holding in the *Crockin* case, *supra.* Quite the contrary, the court below relied on the holding in *Crockin, supra,* (Pa17), and its decision is not in conflict therewith. The facts in the *Crockin* case are materially dissimilar from those in the instant case. Further, the instant case, unlike *Crockin,* involves a claim that re-

location advisory assistance was inadequate and not that the relocation plan was defective.

Although purported conflicts with district court decisions do not meet the critera for review by this Court, petitioners assert a conflict with the district court opinions in *Battison* v. *Niles,* 445 F.Supp. 1082 (N.D. Ohio 1977) and *Home Furniture Co. of Charlotte* v. *U.S.D. of HUD,* 324 F.Supp. 1401 (W.D.N.C. 1971). In the *Battison* case, the plaintiffs had been arbitrarily denied by the City Council the right to purchase a piece of property known as "parcel c" on which initially plaintiffs alone had made a development proposal which conformed with the building and zoning codes. The Council had also imposed unwarranted conditions on plaintiffs' proposal so as to make it economically impossible for plaintiffs to relocate on parcel c and failed to afford plaintiffs the relocation preference to which they, as commercial displacees, were entitled, by ultimately conveying the property to an out-of-state developer. Moreover, the *Battison* court decided the dispute based on state, not federal, law: "In reviewing the actions of the council, the court will apply those standards prescribed by state law." *Id.* at 1091. There is no reported opinion of the Sixth Circuit Court of Appeals adopting the holding in the *Battison* case.

The Third Circuit opinion below considered the holding in *Battison, supra,* and did not express any disagreement with it. The two cases are manifestly dissimilar. In the instant case, the petitioners' proposed use conflicted with the permitted use for the Ratti tract and they never bid on the Ratti tract or applied for a zoning variance. Furthermore, the doctor and dentist who did relocate in a portion of the Ratti tract were also displacees.

The *Home Furniture* case, *supra,* involved a suit by certain businesses for a stay of their eviction under an urban renewal program on the ground that there were no "reasonably satisfactory relocation sites." *Id.* at 1404. Thus, the case involved a challenge to the relocation plan, not relocation advisory assistance. The court merely held that the plaintiff businesses would be allowed to remain at their present location pending a hearing on the merits.

In its opinion the Third Circuit did not even mention the *Home Furniture* case, *supra,* because the case is inapposite. The petitioners in the instant case are not challenging the relocation plan. The petitioners, on page 47 of their Third Circuit brief, characterized their claim as follows: "Pietroniro testified this case was *not* contesting the adoption of the renewal plan or zoning, but that it involved the defendants' failure to properly administer advisory assistance to comparables while they extended relocation preferences to the doctors to the Ratti tract...." (Ra6)

Petitioners now seem to interpret the *Home Furniture* case, *supra,* as standing for the proposition that a failure in a relocation plan to afford an adequate number of relocation sites for commercial displacees constitutes a failure to render appropriate relocation advisory assistance. Assuming that were the holding, which it is not, it is clearly erroneous. Moreover, the Fourth Circuit Court of Appeals specifically rejected the *Home Furniture* case, *supra,* as authority for such a legal proposition. See *Am. Dry Cleaners & Laundry* v. *U.S. Dept. of Transp.,* 722 F.2d 70 (4th Cir. 1983). In the *Americal Dry Cleaners* case, *supra,* the court stated:

> In *Home Furniture Company,* the court enjoined dispossessing the businesses involved pending the development of an effective relocation assistance program, p. 1404, apparently for the reason that there were "not enough sites in Central Charlotte to which the various businesses involved in this project could be moved." p. 1403. If the holding of the court was that the relocation assistance program was ineffective because there were not enough sites in central Charlotte to go around, then we simply disagree with that holding as applied to this case. Without attempting an analysis of the Housing Act, the statute under consideration here 42 U.S.C. §4625, has no such requirement; neither do we construe it so to have. If the holding of the court was that no effective relocation assistance program had been developed for other unstated reasons, then the case may not be necessarily inconsistent with our decision here. In any event, as *Home Furniture Company* may be read to be inconsistent with our decision in this case, it is no longer persuasive authority in this circuit.

Id. at 74. The Third Circuit opinion in the matter *sub judice* cited the *American Dry Cleaners* case, *supra,* with approval. (Pa23) Therefore, the holding below does not conflict with a holding of any Fourth Circuit Court of Appeals, but *may* conflict with a district court opinion (*Home Furniture, supra*) which issued out of the Fourth Circuit, and, if interpreted in the manner suggested by petitioners, was expressly repudiated by the Fourth Circuit Court of Appeals.

This Court has made it abundantly clear that a conflict within the circuits must be real, not imagined. In *Layne, etc., Corp.* v. *Western Well Works,* 261 U.S. 387 (1922) the petitioner claimed a conflict within the circuits and this Court, in dismissing the writ, stated:

> [The Circuits] were really in harmony and not in conflict and . . . there was no ground for our allowing the writ of certiorari to add to an already burdened docket. If it be suggested that as much effort and time as we have given to the consideration of the alleged conflict would have enabled us to dispose of the case before us on the merits, the answer is that *it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles, the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Court of Appeals.* The present case certainly comes under neither head.

Id. at 392-393. (Emphasis added)

In the instant dispute, the Third Circuit's opinion was based solely on the failure of the trial record to support the petitioners' claim of inadequate relocation advisory assistance, the opinion does not conflict with any opinion of another Circuit Court of Appeals and, perforce, the pending petition must be denied.

POINT III

The Third Circuit opinion does not conflict with any decision of this Court.

In their statement of "Questions Presented", the petitioners assert that the Third Circuit opinion in this matter "conflicts with applicable Supreme Court decisions." On page 19 of their petition that assertion is softened to an allegation that "the Third Circuit has failed to utilize Supreme Court standards. . . ." However, a review of the petition reveals no discrete conflict with any ruling of this Court. It is true that the petitioners generally allege a denial of due process and equal protection, but those allegations are based upon a *factual* disagreement with the Court of Appeals, rather than any clash between the Third Circuit's and this Court's views of the law. The petitioners have cited no specific legal proposition found in the Third Circuit opinion which is alleged to have contradicted any ruling of this Court. It is noteworthy in this regard that, in their unsuccessful petition for rehearing (Pa25), the petitioners did not cite a single case decided by this Court. The argument then advanced by the petitioners was completely factual. They attempted to convince the Third Circuit, not that its opinion was legally infirm or in conflict with the opinions of other courts, but that it was mistaken as to the facts. The petitioners are factually in error, but whether or not that is so, is of no consequence because such a factual dispute is not the proper subject of review by this Court.

POINT IV

The petitioner's belated argument of inadequate relocation advisory assistance in connection with the Kinkade property was properly rejected by the Court below and, if it was not, that matter is not the proper subject for review by this Court.

In her closing arguments before the jury, counsel for the petitioners did not once mention the Kinkade parcel, which at all times was privately owned. (Ra12) In the answering brief filed by the petitioners in connection with the Third Circuit appeal in this matter, the theory of petitioners' case was that the Ratti tract was the only comparable and feasible relocation site for the Piet Corp. tavern. On page 15 of their brief they stated: "Pietroniro and Boynton testified that this [the Ratti tract] was the only *comparable* and feasible area for relocation akin to Piet's old location." (Ra5-6) Similarly, on page 49 of petitioners' Third Circuit brief, they argued: ". . . defendants [were] denied referrals to the only comparable parcels in the Ratti Tract." (Ra 6) In the course of oral argument before the Third Circuit, counsel for the petitioners was questioned by the court on this precise point and acknowledged that it was the petitioners' then contention that the Ratti tract was the only feasible relocation site:

> The Court: So that when we are talking about referrals, there was nothing which the municipality could have done to give you comparable property other than the Ratti property.
>
> That's your bottom line, isn't it?

Ms. Liebling: That is correct. The other property referrals were absolutely unfeasible.

The Court: I'm not talking about what they were referred to but there was no property in the area so far as the record shows that would have been comparable—

Ms. Liebling: Not doing an analysis of cost return and location.

The Court: Okay.

(Ra4) The Third Circuit's opinion reflects that Court's recognition of the then theory of the petitioners' case: ". . . Piet believes that there is only one feasible alternative location in Oceanport, namely the so-called 'Ratti tract' which lies virtually across the street from Piet's former location." (Pa16)

After the petitioners had lost the appeal, they filed their unsuccessful petition for rehearing wherein they sought to change the theory of their case so as to circumvent the reasoning of the Court of Appeals. (Pa25)

Assuming that an argument for relocation advisory assistance were timely made with respect to the Kinkade parcel the record palpably does not support such argument. Indeed, the petitioners have recklessly distorted the record. On August 7, 1974 the respondent Leone referred, by letter, the Piet Corp. to five separate realtors who had indicated they would assist the Piet Corp. in its relocation efforts. (Ra26) The Kinkade parcel was sold to the Monmouth County Jockey Club on November 29, 1974 (Ra31),

long before Piet Corp. was displaced (July, 1975). Contrary to petitioners' current assertions, the Kinkade parcel was mentioned by the respondents to the petitioners as a possible relocation site prior to its being sold. (Ra10-11) In fact, Petroniro knew *in 1973* that another displacee (William F. Bataas) was thinking of buying the Kinkade parcel. The following was the testimony of petitioners' witness, Joseph C. Boynton:

> Q. Back in 1973, were yon familiar with the Kincaid property?
>
> A. No, sir, I was not.
>
> Q. You know where it is?
>
> A. Yes, sir, I do.
>
> Q. Did you ever look into it?
>
> A. No, sir.
>
> Q. Did you ever make a determination as to whether it was available in 1973?
>
> A. Mr. Sylvain told me it was available.
>
> Q. Beyond Mr. Sylvain telling you in 1973 that the Kincaid property was available, did you do any independent investigation on your own to help your friend, Mr. Pietroniro?
>
> A. No, because Mr. Sylvain told me at that time Mr. Pietroniro and Mr. Bataas were thinking in fact of probably buying the property.
>
> • • • •
>
> Q. Because of your concern for your good friend, Mr. Pietroniro, did you go to him and say: Are you considering buying the Kincaid property?
>
> A. Yes, I did.
>
> Q. What did he say to you?

A. At that time he told me he thought Mr. Bataas was going to buy the property.

Q. In 1973?

A. I believe so.

(Ra11) Pietroniro admitted that he knew that Mr. Bataas was negotiating for the purchase of the Kinkade parcel prior to its sale to Monmouth Park:

> . . . Mr. Leone had mentioned the Kincaid property. He said *before it was sold,* but what Mr. Leone and Mr. Bataas were doing with the Mayor and Council were trying to negotiate a deal so Mr. Bataas could buy the Kincade property. However, with the Kincaid property, Monmouth Park heard that it was for sale.

(Ra7)

* * * *

Q. Were you aware of the Kincaid site before it was sold?

A. I heard there was a lot of litigation because an old man had died or whatever and it was not for sale.

Q. Who told you that?

A. I just can't recall. I know that they tried to get that house down before it was an eye sore, but there was—when I—when that property became available I would say—I would think the bar across the street started negotiating on it.

Q. When did it become available?

A. I would say around 1974, the latter part.

Q. And you yourself didn't start negotiating for it at that point?

A. No.

(Ra8-9)

On March 25, 1975 the respondent Leone confirmed by letter to Pietroniro that "the Kinkade property was mentioned as a possibility prior to its recent sale . . ." (Ra30)

The petitioners deny that the Piet Corp. was referred to the Kinkade parcel for possible relocation until after it was sold in November, 1974. Assuming that were the fact, which it is not, the petitioners were nonetheless independently aware of the Kinkade property prior to its eviction in July of 1975. Moreover, the petitioners could have approached the new owner of the Kinkade parcel and made an offer to purchase, but they never expressed any interest in the Kinkade parcel and, irrefutably, made no offer to purchase the property. (Ra9) The Piet Corp. was willing to relocate on only one piece of property: the Ratti tract.

This dispute, as with the others raised by the instant petition, seeks to draw this Court, improperly, into a controversy which has no significance beyond this particular case, involves mere questions of fact and is ill-suited for review by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully urged by the respondents that the United States Supreme Court deny the pending petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

JOHN F. NEARY
CONNELL, FOLEY & GEISER
Counsel for Respondents
Gateway I, Suite 1600
Newark, New Jersey 07102

Dated: November 14, 1985

Certification

The undersigned duly certifies that he is counsel of record for the Respondents and a member in good standing of the Bar of the United States Supreme Court.

JOHN F. NEARY

[APPENDIX FOLLOWS]

APPENDIX

Excerpts From Transcript of Oral Argument on March 19, 1985 of Appeal before the Third Circuit Court of Appeals

UNITED STATES COURT OF APPEALS
IN THE THIRD CIRCUIT

NO. 83-5926

FRANK PIETRONIRO,ETC., ET AL.,

VS.

BOROUGH OF OCEANPORT, NEW JERSEY ET AL.

VS.

UNITED STATES OF AMERICA DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ETC.

(D.C. Civil No. 79-1836)

FRANK PIETRONIRO, ET AL.

VS.

GEORGE BARRETT

(D.C. Civil No. 79-1837)

Excerpts From Transcript of Oral Argument on March 19, 1985 of Appeal Before the Third Circuit Court of Appeals

FRANK PIETRONIRO, ET AL.

VS.

CLEMENT V. SOMMERS

(D.C. Civil No. 79-1838)

FRANK PIETRONIRO, ET AL.

VS.

ELWOOD L. BAXTER
(D.C. Civil No. 79-1839)

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(2)* NO. 83-5926

CONTINUED

FRANK PIETRONIRO, ET AL.

VS.

NICHOLAS LEONE

(D.C. Civil No. 79-1840)

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* Figures in parentheses refer to each new page of the Stenographic Transcript.

Excerpts From Transcript of Oral Argument on March 19, 1985 of Appeal Before the Third Circuit Court of Appeals

Hearing held in the above-captioned matter at the United State Court house, 601 Market Street, Philadelphia, Pennsylvania on March 19, 1985, taken stenographically from an audio tape-recording of the above-captioned hearing by Geraldine Coppola, Registered Professional Reporter, there being present.

BEFORE:

COLLINS J. SEITZ, Circuit Judge
A. LEON HIGGINBOTHAM, Circuit Judge
JAMES T. GILES, District Judge

APPEARANCES:

THEODORE W. GEISER
Counsel for the Appellants

CYNTHIA LIEBLING
Counsel for the Appellees

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(39) * * *

The Court: Now, getting to my next question, outside of the park or the Rattie tract—out of the Rattie tract, what evidence is there in this record that within this borough there were comparable properties available?

Excerpts From Transcript of Oral Argument on March 19, 1985 of Appeal Before the Third Circuit Court of Appeals

Ms. Liebling: That was the whole problem. The Rattie property were—was the NDP land, the comparables that should have been disposed of. There was no way on this commercial zone to relocate because the property wasn't available for sale. What you have—

The Court: So that when we are talking about referrals, there was nothing which the municipality could have done to give you comparable property other than the Rattie property.

That's your bottom line; isn't it?

Ms. Liebling: That is correct. The other property referrals were absolutely unfeasible and they weren't really—

The Court: I'm not talking about what they were referred to but there was no property in the area so far as the record shows that would have been comparable—

(40) Ms. Liebling: Not doing an analysis of cost return and location.

The Court: Okay.

* * *

Excerpts From Petitioners' Answering Brief Filed With the Third Circuit Court of Appeals

(Page 13)

* * *

THE KINCADE PROPERTY

The Kincade Property abutted Monmouth Park's property and sold for $23,000 to the Track in November, 1974. (A2170a-A2172a) Mr. Pietroniro was not aware it was available until after this sale to the Track, since he knew Mr. Bataas, the other displaced licensee, was negotiating on it. (A864a, A1614a, A1119a, A1221a, A686a, A687a, A713a, A714a) Mr. Pietroniro testified that he received a letter from defendant Leone March 25, 1975, which stated that the Kincade Property had been referred before the sale to the Track, which Piet characterized as "a lie". (A437a) Leone was also the one that suggested Piet relocate and move the business in the Stalder Property shacks, which Plaintiffs' experts testified was *infeasible*. (A326a, A324a, A325a, A1398a, A1402a, A1421a). The Monmouth Park zone and Kincade Property was *never available* after 1974 for sale, contrary to appellants' contentions. (A1403a, A1409a, A2441a)

* * *

(Page 15)

* * *

THE RATTI TRACT

Pietroniro and Boynton testified that this was the only *comparable* and feasible area for relocation akin to Piet's

old location. It was high, dry vacant land, owned by the Boro, acquired in NDP across from Piet's old location, close to its old source of customers. Rebuilding costs, at a minimum, were estimated at *$75,000* to replace Piet's bar *and apartment business, unlike Teicher's.* It was located around commercial uses. (A1680a, A1681a, A1735a, A1698a, A1340a-A1350a, A1264a, A1297a, A1298a, • • •

(Pages 47-48)

• • •

Pietroniro testified his case was *not* contesting the adoption of the renewal plan or zoning, but that it involved the defendants' failures to properly administer advisory assistance to comparables while they extended relocation preferences to the doctors to the Ratti tract, who were other similarly situated commercial displacees. . . .

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(Page 49)

• • •

• • • Piet answered Sylvain's letters and protested RATTI TRACT denials and defendants' bad faith acts. (A497a, A498a, A1926a-A1933a) For all intent and purposes, the letters suggesting relocation alternatives with Pietneidas were as all of the LPA letters, deviod of substance, embracing suggestions which just "looked good" in this "paper" program, being deviod of substance, while defendants denied referrals to the only comparable parcels in the RATTI TRACT. • • •

Excerpts From Trial Transcript

• • •

(Frank Pietroniro's Testimony)

(2.144). • • •

A. Well, I received a letter after, after the Kincaid property was purchased by Monmouth Park. I received a letter from Mr. Sylvain that he had mentioned the Kincaid property to me just before it was sold.

Now, what Mr. Sylvain—I am sorry, Mr. Leone, I am sorry, Mr. Leone had mentioned the Kincaid property. He said before it was sold, but what Mr. Leone and Mr. Bataas were doing with the Mayor and council were trying to negotiate a deal so Mr. Bataas could buy the Kincaid property. However, with the Kincaid property, Monmouth Park heard that it was for sale.

• • •

(Frank Pietroniro's Testimony)

(4.82) • • •

Q. Did you make any effort at all to inquire of the owner of the Kincaid property, A, whether it was for sale and, B if so, what the asking price was?

I think that calls for a yes or no, your Honor.

The Court: If he can answer it yes or no.

A. Mr. Leone with the Kincaid property never, never mentioned that and you can check your correspondence, never mentioned the Kincaid property as a site for me to relocate. He did, however, after the property was sold and the reason he never mentioned it to me—

Q. I don't want speculation here.

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* Figures in parentheses refer to each new page of the stenographic transcript.

Excerpts From Trial Transcript

He did however after the property was sold—go on.

A. He did after the property was sold.

Q. Did you go to the then owner and inquire whether you could acquire that property or so much of it as you might require for relocation? A. No, sir.

• • •

(Frank Pietroniro's Testimony)

(4.84) • • •

Q. You didn't know that the site was available before it was sold to Monmouth Park? A. No, sir.

Q. Deposition of December 11, 1979, page 88, lines 1 through 14, and I will wait a moment, your Honor.

Mr. Kelley: Your Honor please, if it would speed things up, I would be happy to let Mrs. Liebling use my copy of the deposition.

The Court: Thank you. I am sure she would appreciate that.

Ms. Liebling: What?

Mr. Geiser: Lines 1 through 14.

Ms. Liebling: 1 through 14.

By Mr. Geiser:

Q. At that time, Mr. Pietroniro, we asked you, reading:

"Question: Were you aware of the Kincaid site before it was sold?

"Answer: I heard there was a lot of litigation because an old man had died or whatever and it was not for sale.

"Question: Who told you that?

"Answer: I just can't recall. I know that they

tried to get that house knocked down because it was an (4.85) eye sore, but there was—when I—when that property became available I would say— I would think the bar across the street started negotiating on it.

"Question: When did it become available?

"Answer: I would say around 1974, the latter part.

"Question: And you yourself didn't start negotiating for it at that point?

"Answer: No."

Q. First of all, who was the bar across the street? A. That was Mr. Bataas.

Q. So did you then know that Bataas was negotiating with respect to the Kincaid property? A. Yes, sir.

Q. So you knew about its availability before it was sold to Monmouth Park, didn't you? A. No. sir. I knew he had been negotiating on it after it had been sold. He had negotiated on it and then it was sold and I found out about it after from Councilman Delera.

Q. In any event you at no time made any effort to acquire the Kincaid property, did you? A. I didn't know it was available.

Q. I guess in a sense, don't you think everything is available? A. If you got the money I guess everything is

. . . .

* * *

(Frank Pietroniro's Testimony)

(5.144) * * *

When I asked him about the liquor stock there, he said that I am not entitled to any liquor stock or I can move

it, take it away with me. He also lied when he wrote the letter about me being informed about the Kincaid property, which I wasn't, because at that time they were dickering or negotiating with Bataas and his attorney and Baxter and Sommers, and the rest of them, to relocate Bataas' license there.

* * *

(Testimony of Clement Sommers)

(36) * * *

A. Yes, I can. This is, this indicates the right side of the photograph, the 6-story Senior Citizens' complex.

Q. What does it indicate to the left of the 6-story Senior Citizens' complex? A. It represents vacant land which is owned by the Monmouth Park Jockey Club.

Q. Prior to the Monomuth Park Jockey Club, who was the owner, if you know? A. Kincaid.

Q. Is that the same Kincaid property that was available for sale in late 1974? A. It was.

Q. To your knowledge, was Mr. Pietroneo referred to that parcel or aware of it? A. Yes.

Q. To your knowledge, did Mr. Pietronero ever make an offer to purchase that parcel? A. Not to my knowledge.

Q. Is it in the commercial zone, sir? A. It is.

* * *

(The Testimony of Nicholas Leone)

(165) * * *

Q. Kincaid was mentioned to Mr. Pietronero before it was sold? A. Yes.

* * *

Excerpts From Trial Transcript

(Testimony of Joseph C. Boynton)

(7.205) • • •

Q. Back in 1973, were you familar with the Kincaid property? A. No, sir, I was not.

Q. You know where it is? A. Yes, sir, I do.

Q. Did you ever look into it? A. No, sir.

Q. Did you ever make a determination as to whether it was available in 1973? A. Mr. Sylvain told me it was available.

Q. Beyond Mr. Sylvain telling you in 1973 that the Kincaid property was available, did you do any independent investigation on your own to help your friend, Mr. Pietroniro A. No, because Mr. Sylvain told me at that time Mr. Pietroniro and Mr. Bataas were thinking in fact of probably buying the property.

(The record is read back by the Court Reporter.)

Q. Because of your concern for your good friend, (7.206) Mr. Pietroniro, did you go to him and say: Are you considering buying the Kincaid property? A. Yes, I did.

Q. What did he say to you? A. At that time he told me he thought Mr. Bataas was going to buy the property.

Q. In 1973? A. I believe so.

• • •

Closing Arguments of Petitioners' Counsel

* * *

(16.87) * * *

(The jury entered the courtroom.)

The Court: The record will reflect you have returned to the box. Thank you for your prompt return.

We will not hear the summation of Ms. Liebling on behalf of the plaintiffs.

Ms. Liebling: Thank you for your attentiveness in this trial, and I realize that it has been many weeks, but I feel that we had a case to present which spanned over a period of about eight years.

Mr. Kelley: Your Honor, please, I really can't hear a word she is saying.

The Court: I would suggest, Ms. Liebling, if you wish to speak softly, you may do so. If you'd like to, and it would be easier, you may sit over here, Mr. Kelley, other than in the jury box, of course.

Proceed, please.

Ms. Liebling: What I would like to do is in effect go over the urban renewal project quickly and get into what the testimony reflects on what plaintiffs and defendants said.

We established in 1972 an urban renewal plan was put through in Oceanport. What happened was that the entire commercial zone was then rezoned to mostly the race

track, with (16.88) the exception of the Teischler complex or Mayor Sommers' bar is a commercial property. The business district became zoned residential with the stipulation that up to 51 percent of it had to stay that way, 49 percent, as the need arose, could have been zoned commercial to accomodate the displacement of businesses and eventual relocation which was needed after the project. That never occurred. There was never a shopping center built by Monmouth Park, and the plan was dropped.

Basically this is what happened. I contend that the plan should have been properly updated to accomodate the displaced businesses. What happened to the businesses in this project is that they could not relocate, is that they could relocate, and most of them left town. However, the liquor license holders did not have that option. Their licenses are only good in Oceanport, must be located in Oceanport. Never been established by the testimony any effort on the part of the Borough to be or to negotiate for the licenses or to render an active or effective relocation assistance to the license holders.

What happened in this case is they have been given, merely lip service.

As early as 1973-1974, the Piet Corporation advised that it was economically infeasible for relocation on the Stalder and Arnold tracts at that time due to their location, the size, and investments that had been invested. Go to the (16.89) Stalder property first. A 185,000-dollar price plus Sea Duster condominiums, over a half-million-dollar investment to get the property usable, in shape where it is now town houses. There had been no commercial development on that tract.

Closing Arguments of Petitioners' Counsel

So far as the Arnold tract, there was no building on that tract until after 1978 due to the Wetlands problems. We have been all through this in the case and had witnesses testify as to the problems on these tracts, which I contend, and I think our evidence has shown that when the infeasbility of these relocations came into the minds of these individuals, its appropriate updating plans did not occur. The individuals have testified there has been no active relocation assistance given to the corporation in the late seventies, and there really was no active and effective relocation assistance given to the license holders at all in this project.

I ask the defendant Leone on the stand about the information he had available in the office. He did not have the information required under the statute for the relocation of the bars or any other commercial displacees. I think, using common sense in this project, where have all the businesses gone? They have left town or else two of them have relocated in Mr. Teischer's complex, one with the restrictive convenant that was the D license held by Art's Liquors, and one the barber shop with also a restrictive covenant relocated. The Teischer complex was infeasible relocation site. (16.90) Piet Corporation was a landowner at the beginning of this project. In the Teischer complex substantial investment would be needed, since Mr. Teischer was going to provide only a shell. Those substantial improvements would also, according to the lease, become Mr. Teischer's property. So you have a substantial investment in the Teischer complex becomng Mr. Teischer's improvements.

Also vis-a-vis the income of Colonial Bar and to be also considered.

Now after the bar paid its expenses, $12,000 was its corporate profit. That was paid out to shareholders, Mr. and Mrs. Pietroniro. It was a closely held corporation. The apartment rentals offset its mortgage in those days before it lost its apartment rentals. The Teischer complex, the rents would have been so prohibitive the man would not have been able to pay the rent, since the rents reflected in Art's Liquors were not reflective of the rent given to other people, the estimate. Mr. Anfuso so testified that those rents which he was offered, he said it was substantially less, if you remember the testimony, then the rest of what the people were being offered at the time.

Economically it was infeasible. These tracts were economically infeasible. We have heard of the tracts many, many times. I think the crux of the situation is, ask yourselves this question, was this man treated on an equal plane with (16.91) the doctors and the dentists on Parcel 6? The answer must be no.

In my opening statement I asked you do you feel that a doctor and a dentist have more constitutional rights than any one of you. I do not feel that, and in this case we are fighting for a principle, and I would fight as hard if it happened to any one of you as I did for this man today.

Now regarding Parcel 6, Parcel 6 is the affirmative act of relocation. Parcel 6 shows that these men had the power, but accomodated only who they chose to accommodate in relocating, I contend that the license holders of the project severely needed more help than the doctors

or dentists did, because they could in no way do it, and they needed to relocate. Couldn't go out of town.

One of two options. In good faith negotiate for the licenses or relocate the people, but don't have them paying for the licenses for eight years and not be able to relocate. I can't see where the point is putting through an urban renewal project, not inviting any zone for comercial relocation and zoning all the previous commercial property entitled to a vested interest so, it is unavailable for relocation. That is what we have shown has happened.

Now, these tracts and Parcel 6, you have heard the figures. You know the disparate treatment that has been involved. I think we have pointed that out, and I think that anybody with (16.92) any common sense is going to know that the license holders have been discriminated against, and the doctors and dentists on Parcel 6 have been given preferential treatment. They had a ten-day business interruption. They were allowed to stay in their location until they built the new building and went over to Parcel 6.

When Mr. Pietroniro went to Mr. Sylvain and had an interview on the redevelopment of the parcel, he said, "You will never get that because we don't want anybody there who sells liquor."

I say to you that we have this bar a hundred yards down the road, and we have Parcel 6, and I want to know in my mind what is the justification for not relocating the bars on property they could afford so that they could build buildings and be landowners like they were before, so they wouldn't improve property for someone else, so the place would be their own and not anyone else's.

Closing Arguments of Petitioners' Counsel

You are going to be read the HUD regulations. Maybe I am talking too fast. They all speak to effective maximum statistics, and I think that if any of you people were running this program, assistance not statistics—I know I would have felt that way—you would not have let people be thrown out on the streets, because they were people. They may refer to the mas having a greasy spoon or blighted bar, but they were people. They were not pieces of dirt. And some of them, like (16.93) this man, were up in years, with no education, and had a lot of years, a lot of years tied up in their living. And to just take a man's living away from him like that says a lot about the type people that are sitting over on the other side of the room. Because I know I sure couldn't sleep at night if I knew I was doing that to anybody. That is just the way I feel about it.

I also think that anybody who is in politics or in public life should not use private information for their own benefit and interest, and I believe that that is what Mr. Sommers did. He was a member of the Planning Board, an advocate of the master plan, and testified in open court that he knew in 1972 that this race track was not going to come in and build a shopping center. Yet there has been no updating of the master plan, and the only thing that is keeping the liquor license alive today is because in 1981 I got a Federal injunction.

Mr. Keley: Object, if your Honor please.

The Court: Is there evidence in this record with regard to the court order?

Closing Arguments of Petitioners' Counsel

Mr. Kelley: I object to her saying anything, if your Honor please.

The Court: Just a minute. The objection is sustained with reference to that. That is not appropriate.

Ms. Liebling: The license today, this license has not been used since 1975, July 1, and it represents a man's life, (16.94) just like Mr. Bataas' license represented his livelihood. I feel for Mr. Bataas, because Mr. Bataas had years tied up in his business and money tied up in his business, and they never paid him for his license.

These defendants, these attorneys here would have you believe today that this license is not a part of these proceedings. It is the central part, because everything rests today on the outcome so far as this license goes. They have already gotten Mr. Bataas' license, and I contend that with the implementation of this urban renewal program their prime objective was to freeze out licenses because the sale of a liquor license in a community depends on the amount that are issued. This happens to be a Broad C, of which there is only 580 in the whole state. Now these licenses are retired, and the holders are not paid for the value for them. People who hold licenses in the town, licenses will be that much more enhanced.

I contend that they have zoned the license holders out of business, and in good faith they have not agreed to pay for the licenses, nor have they agreed to put them somewhere in a viable location. And the common sense, if you evaluate this program, there is too much that has gone on in order to get the HUD money in the first place when the race track came along and donated certain parcels of land.

Closing Arguments of Petitioners' Counsel

Now I explained some type of the funding to you before we (16.95) got started in the case. Those parcels were used. First conveyed to the Borough. Then they were used as their credit for the first-year funding to HUD. It just happens to be in the way of this new road, but, of course, the Piet Corporation bar was in the way, also. So they used the race track properties. The Borough got them. They used them as the one-fourth funding. HUD gave three-fourths, and they used the value of the properties as their credit for one-fourth share for the first year.

Without those properties this urban renewal program would not have been able to be put through, and without the urban renewal program, the Borough would have never been conferred or had conferred upon it the powers of condemnation to get these businesses out of the way of this new road. This is absolutely true, and in this newspaper it shows, if you have seen this, Monmouth Park donates property. All these properties were in the way of the road, and they were used as a funding share for HUD.

Here is Mr. Sommers, Mr. Sylvain, Mr. Kelley's partner, Mr. Wardell, and I don't know who that is, but anyway, what do we have. O.K.? We have got a program where we have some HUD money coming in now and got to get the businesses out of the way for the road.

This man was not evicted because his property was blighted. He was evicted because the road was coming through.

Closing Arguments of Petitioners' Counsel

(16.96) At the same time a little before all commercial property that was available, most of it was zoned to Monmouth Park Race Track, greatly enhancing the property value of the track. As the project proceeded—by the way, this road will eventually lead to the race track. This road here, as the program proceeded, there was no effective relocation assistance for the businesses. The businesses left town. The license holders could not leave. What happened was they wrote them all kinds of letters. He said, "I can't go to these properties here. I can't afford them. You offered me $47,000 for my building in a condemnation. You deposited the money in the court June 21 of 1974." Out of that under the statute a 43,000-dollar mortgage had to be paid. That left the man with $4,000, June 21, 1974.

Now at that point the building was under-appraised by the Borough appraiser. The man, in order to get the fair market value of his building had to go through what is called condemnation in New Jersey. In other words, he had to sue the Borough, saying, "My property is worth more than you are willing to give me." Now that went on for a year, and he was finally awarded another $11,000. However, during that time he was harassed. He was told to leave the premises. "We got a road coming through; don't want you there.

He said, "I have nowhere to go, have a liquor license. Can't throw me out on the street with my liquor license."

(1697) They said, "Well, that's enough." In effect, that is what happened.

Closing Arguments of Petitioners' Counsel

On July 1st—well, before July 1st came along, 1975, he recieved the $11,000, but by the time he got paid, got through paying his lawyers and appraisers and the sewer bill, he had almost nothing left. So then they come along July 1, 1975, and a court order is entered, saying that you must leave the premises, but you are entitled to be compensated for the months of July, August and September of 1975 for your temporary displacement, because this is only going to be a temporary displacement, and we are going to give you those three, the Borough is going to pay you those three months' income and use as the basis your income for those months in 1974. So he is evicted.

The Borough never pays an award, and what happens is they set off the rents from the damage award. Mr. Sylvain makes, the attorneys make remarks about it won't pay him to set it off from the rents. Never sued him for the rents, and under the HUD regulations that are going to be read, there is a certain procedure for an agency setoff, a judicial action for the rents had to be started 30 days after they claimed that the debt accrued in order to realistically go after the man for the rents. So the damage award has never been paid.

What was a temporary displacement has gone into nine years now. In 1979 the New Jersey State Alcholic Beverage (16.98) Commission and the Legislature put through what is called the pocket law, saying that if any liquor license is inactive, it will be killed within two years unless you show good cause.

Closing Arguments of Petitioners' Counsel

Now under that law the licenses are in jeopardy. This license particularly is in jeopardy, and I have already, you know, said to you what I had to do to keep this license alive so that we could come here today and tell you our story, but the value of this license is uncontroverted in this proceeding. They have no produced no appraisers, and they have not controverted the fact that this is a Broad C, very valuable license. And what is in isssue today is this man is entitled to be compensated for the value of his license, and he is also entitled to nine years of $550 he had been paying in order to keep that license alive.

I believe you are all fair people, and I don't believe that you would have acted in the same fashion as these men. I don't believe you would have shown the callousness that these men showed even when they testified from the witness stand. I know I wouldn't have. Maybe I have a lot to learn about the world, but I respect people's property, and I don't think that politics should be played with people's lives, and that is exactly what has been done in this case. And it is a sad case, because it was done to a man when he was old, a man who had no education, a man who had no pension or any type of security, and he was forced at the age of 55 to start his (16.99) life over. And believe me when I tell you it is hard to go out and get a job at the age of 55 with no education.

You have 14 years of his life tied up in that bar, and there is no way that I think these defendants can put a snow job on your people, to have you think that a man could go ahead for nine years, pay $550 out each year

to renew a license that he didn't want to relocate. It would make no sense, no sense in the world, and that is not what happened.

I just pray to God, you know, that they don't that they don't snow you people over, because they have given a good snow job up to now, a real good snow job.

Anyway, so far as the rental hardship goes, HUD regulations prescribe the LPA should minimize the displacement of the individual and try to soften the blows of displacement as much as they can.

In this denial of hardship, this was during the condemnation of the property, during the time he was fight ing in court for the value of the building. It says: after due consideration we found we could not reduce the rent because HUD guidlines, and therefore LPA rental policy, did not allow for reduction in rent where a business is concerned.

I want you to pay particular attention to that, because the Judge is going to read some laws which show that hardships are to be granted in cases where, you know, the project has worked a hardship on the property that are about to be (16.100) taken.

A lot of statutes on the coordination of displacement with relocation and effective maximum relocation assistance is mandated under the statutes, and you will hear the statutes.

As early as December 3, 1973, Mayor Baxter was apprised of the liquor license problem. At that time he was advised that the zoning was unfavorable. Something had

to be done with the licenses, and that the only viable alternative was to open that other property up. It never was done.

Now so far as the Old Orchard in which Mayor Baxter, spending the public money on whatever he had down there, that is uncontroverted in the record, has never been denied. Neither has the Mayor's partnership regarding the liquor license of this man. They interjected their personal business into the renewal and tried to get what they could. I really can't see where, you know, Mr. Bataas came from Ohio—nothing else that they can take away from him—he came here because he wanted to tell the story, and he was telling the truth. He had absolutely nothing to gain from coming here and testifying, except trying to help Mr. Pietroniro tell the truth. His motives you should weigh for testifying. He didn't get anything. Neither did Mr. Boynton, and believe me, Mr. Boynton is telling the truth.

Mr. Pietroniro was telling the truth. They laughed at him and tanted him and teased him, and that is what happened to (16.101) him. It is really sad. It is, but I am saying the man is entitled to the value of his license. He is entitled to the renewal fees for the nine years he has been spending in order to keep this alive. And he is entitled— they put the corporation out of business. It had 12,000-dollar a year profits. He is entitled to the profits lost which was paid as his salary. Those three things he is entitled to, but I consider it a victory just being able to tell you people what really happened down there in that town, because I feel that somebody has got to care about those businessmen. That is the way I feel;

with their greasy spoon and blighted area and everything else, there was a lot of lives tied up there and a lot of people put a lot of time, like Larino's. They were nice people, had a little Italian restaurant, and everybody just thinks these guys talk about them like they are dirt.

Oh, so basically this is what happened, and through denials of the effective relocation assistance, the corporation is entitled to those three elements of damage. But, like I said to you today, I feel like it is a victory, because it has taken us four years to stand before you people and four years of motions and paperwork, and see everything that has gone into this case, and I just feel like it is a victory because we did get to court, and we did get our story before the people. And believe me when I tell you the plaintiff has presented a truthful and factual account of what actually (16.102) happened. And believe me when I tell you people that politics was played with innocent lives in that town, and I just know that these men here, if there is a God that, you know, they will be made to account for their actions. But I hope that today you bring them to account and show them that you know this is the United States, like I said before, it is not Russia. We don't put people out on the streets. We give them what they are entitled to. You don't take away their rights without just compensation, because that is what the Fifth and Fourteenth Amendments are all about, and that is exactly what was done in Oceanport.

I want to thank you very much for your time.

Letter Dated August 7, 1974 From Nicholas Leone to Frank Pietroniro

(Exhibit DB-17)

BOROUGH OF OCEANPORT
REDEVELOPMENT AGENCY
21 MAIN STREET
OCEANPORT, N.J. 07757

August 7, 1974

Colonial Inn/Piet Corp.
Attention: Mr. F. Pietronaro
345 Oceanport Avenue
Oceanport, New Jersey 07757

Dear Mr. Petronaro,

In an effort to search out available commercial ground in Oceanport for relocation purposes we have contacted at least six realtors in the area.

We have had response from the following.

(1) Colao Agency (please see attached)

(2) Teicher Agency (" ")

(3) Bardale Realty-Mr Barc of that firm advised the Redevelopment Agency that he intended to speak with you. Have you anything to add to this.

(4) Marie Cox Agency

(5) A. Fred Maffeo Agency

Leter Dated August 7, 1974 From Nicholas Leone to Frank Pietroniro

We'd like to discuss this matter with you therefore please feel free to call the office if there are any questions.

Very truly yours,

NICHOLAS A. LEONE
Asst. Executive Director

NAL:SVW

Letter Dated March 25, 1975 From Nicholas Leone to Frank Pietroniro

(Exhibit DB-95)

(Seal)

BOROUGH OF OCEANPORT
Office of Community Development
21 Main Street, Oceanport, N.J. 07757
(201) 544-1440

March 25, 1975

Mr. Frank Pietronaro
Piet Corporation
349 Oceanport Avenue
Oceanport, N.J. 07757

Dear Mr. Pietronaro,

A review of the Relocation Status of the Colonial Inn Bar and Package Goods Store indicates that the following efforts and referrals were made to you by the LPA and Staff.

1. The relocation needs of the Piet Corp. were discussed with at least five (5) real estate firms and that representatives of some of them spoke with you on this matter.

2. Verbal reference has often been made to you by LPA members and staff about the Monmouth Park Jockey Club's proposed Shopping Center/ apartment complex. This possibility was discussed with you and Mr. Resnikoff, by the LPA and staff on February 20, 1975. At that meeting the Mayor's

Letter Dated March 25, 1975 From Nicholas Leone to Frank Petroniro

offer to act as liaison to the Jockey Club was accepted and is currently pending. Also at that meeting Mr. Resnikoff said that because of the major investment involved, your review of Teicher's complex and the Stalder property were economically infeasible as relocation sites but that the area directly across the road from the present location is the only feasible site.

3. The LPA has often referred the Stalder property namely Block 77D, Lot 1 and the Teicher complex to you and again refers them to you for investigation since they are still available. Should you choose to pursue the purchase of either parcel, the Agency will assist you in any way that it is able.

4. The LPA has also advised you to engage a real estate firm to assist in searching for a relocation site and that certain costs incurred by the firm in assisting you could be borne by the LPA. However, it is necessary that advance notice of your selection be given to the LPA office.

5. In a meeting with Mr. Sylvain and I on October 30, 1974 you advised us that after giving thought to the Stalder property and Teicher's commercial complex, you do not feel it is economically feasible to locate at either of these sites.

You further advised us that you were negotiating with Monmouth Park to place just a liquor store

Letter Dated March 25, 1975 From Nicholas Leone to Frank Petroniro

at their proposed apartment shopping center complex. This hinges on the enactment of the new Zoning Ordinance by Oceanport and a commitment from Monmouth Park.

Should this not become feasible, your second choice is to relocate on a corner at the intersection of Main and Oceanport Avenue. This was considered infeasible at that meeting of February 20, 1975.

6. Although not thorougly discussed, the Kincaid property was mentioned as a possiblity prior to its recent sale as well as the parcel of ground just the other side of the bridge behind Pemberton Avenue. (Calao is now developing it)

The Agency staff is limited in its referrals because of the liquor license, but all possible referrals have been made.

If there are any questions or if we may be of any further assistance, please contact this office.

Very truly yours,

NICHOLAS A. LEONE
Assistant Director

NAL/pv

Deed Dated November 29, 1974 From Kinkade Holding Co., Inc. to Monmouth Park Jockey Club

(Exhibit DB-171)

COUNTY OF MONMOUTH
Consolidation 13,000
Realty Transfer Fee 23
Date 12/4/74 By Pc

THIS DEED, made the 29th day of November 1974,

Between

KINKADE HOLDING CO. INC.

a corporation existing under and by virtue of the laws of the State of New Jersey having its principal office at 1709 Union Ave. in the Township of Hazlet in the County of Monmouth and State of New Jersey herein designated as the Grantor,

And

MONMOUTH PARK JOCKEY CLUB, a corporation of the State of New Jersey with its prinicpal office located at Oceanport Avenue in the Borough of Oceanport in the County of Monmouth and State of New Jersey herein designated as the Grantees;

Witnesseth, that the Grantor, for and in consideration of TWENTY-THREE THOUSAND and 00/100 ($23,000.-00) DOLLARS lawful money of the United States of America, to it in hand well and truly paid by the Grantees, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the Grantor

Deed Dated November 29, 1974 From Kinkade Holding Co., Inc. to Monmouth Park Jockey Club

being therewith fully satisfied, does by these presents grant, bargin, sell and convey unto the Grantees forever,

All that tract or parcel of land and premises, situate, lying and being in the Borough of Oceanport in the County of Monmouth and State of New Jersey, more particularly described as follows:

BEGINNING at a pin set in the westerly side of Oceanport Avenue distant northerly 715 feet from a spike set at the intersection of the westerly line of Oceanport Avenue and the northerly line of Port-au-Peck Avenue; thence (1) Northerly along westerly line of Port-au-Peck Avenue, 150 feet to a point in the southerly line of lands of Wilson; thence (2) South 64 degrees 07 minutes West, along the southerly line of lands of Wilson, 200 feet to a point; thence (3) South 25 degrees 53 minutes East, parallel with the westerly line of Oceanport Avenue 150 feet to a pin set; thence (4) North 64 degrees 07 minutes East, 200 feet to the point or place of BEGINNING.

The foregoing description is taken from a survey of part of Lot 22 Block 80-B Lots 20-B and 22-A Block 80-C Lots 7 through 28 and part of 29, part of 30, Lots 31 through 54 and Lots 56 through 68 Block 80-A-25 Borough of Oceanport, Monmouth County, N.J., Richard T. Noble, P.E. & L.S. dated August 24, 1973 revised October 30, 1973.

Deed Dated November 29, 1974 From Kinkade Holding Co., Inc. to Monmouth Park Jockey Club

BEING AND INTENDED to be part of the same lands and premises conveyed to Kinkade Holding Co. from George S. Kinkade and Ester Kinkade, his wife dated November 3, 1953 recorded in the Monmouth County Clerk's Office December 15, 1953 in Deed Book 2464 page 462.

Together with all and singular the buildings, improvements, ways woods, waters watercourses, rights liberties, privileges, hereditaments and appurtences to the same belonging or in any wise appertaining and the revision and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof; *And also* all the estate, right, title, interest, use, possession, property, claim and demand whatsoever, of the Grantor both in laws and in equity, of, in and to the premises herein described, and every part and parcel thereof, with the appurtenances. *To have and hold* all and singular, the premises herein described, together with the appurtenances, unto the Grantees and to Grantees' proper use and benefit forever.

And the Grantor convenants that it has not done or executed, or knowingly suffered to be done or executed, any act, deed or thing whatsoever whereby or by means whereof the premises conveyed herein, or any part thereof, now are or at any time hereafter, will or may be charged or encomumbered in any manner or way whatsoever.

In all references herein to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appro-

priate gender or number as the text of the within instrument may require.

Wherever in this instrument any party shall be designated or referred to by name or general reference, such designation is intended to and shall have the same effect as if the words "heirs, executors, administrators, personal or legal representatives, successors and assigns" had been inserted after each and every such designation.

In Witness Whereof, the Grantor has caused these presents to be signed and attested by its proper corporate officers and its corporate seal to be hereto affixed the day and year above written.

KINKADE HOLDING CO., INC.

By: EUGENE E. KINKADE
President

ATTEST:

CHARLES A. KINKADE
Secretary

(Seal)

Deed Dated November 29, 1974 From Kinkade Holding Co., Inc. to Monmouth Park Jockey Club

State of New Jersey, County of Monmouth ss: *Be it Remembered,* that on November 29, 1974, before me, the subscriber, A Notary Public of the State of New Jersey personnally appeared Charles A. Kinkade who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is the Secretary of Kinkade Holding Co., Inc. the Corporation named in the within instrument; that Eugene E. Kinkade is the President of said Corporation; that the execution, as well as the making of this Instrument, has been duly authorized by a proper resolution of the Board of Directors of the said Corporation; that deponent well knows the corporate seal of said Corporation; and that the seal affixed to said Instrument is the proper corporate seal and was thereto affixed and said Instrument signed and delivered by said President as and for the voluntary act and deed of said Corporation, in the presence of deponent, who thereupon subscribed his name thereto as attesting witness; and that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within deed, as such consideration is defined in P.L. 1968, c. 49, Sec. 1(c), is $23,000.00

CHARLES A. KINKADE

Sworn to and subscribed before me,
the date aforesaid,

MICHAEL KINGSLEY

(Seal)

Prepared by William L. Russell, Jr. Esq.

Deed Dated November 29, 1974 From Kinkade Holding Co., Inc. to Monmouth Park Jockey Club

STATE OF NEW JERSEY, }
COUNTY OF MONMOUTH, } ss.:

I, Jane G. Clayton, Clerk of the County of Monmouth, and also Deputy Clerk of the Superior Court, in and for said County, the same being a Court of Record,

DO HEREBY CERTIFY that the foregoing copy of Deed

KINKADE HODING CO., INC.

TO

MONMOUTH PARK JOCKEY CLUB

is true and correct as the same remains on record in my office in book 3908 OF DEEDS ON PAGE 687 & C.

IN WITNESS WHEREOF, I have set my hand and affixed the official seal of said Court and County, at Freehold, this 28th day of September A.D. One Thousand nine hundred and Eighty-three

JANE G. CLAYTON
County Clerk

(Seal)